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Nancy Bélanger, Commissioner
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January 25, 2018

RE:

- (a) Request that you recuse herself from ruling on involving the Trudeau Cabinet and Liberals because you were appointed by Prime Minister Trudeau through a process that violates the law;**
- (b) Request that you delegate all five Democracy Watch complaints and other matters involving Liberals to a person independent of yourself, the Trudeau Cabinet, and all federal political parties**

Dear Commissioner Bélanger:

I am writing on behalf of Democracy Watch to request that you recuse yourself from decisions concerning the enforcement of the *Lobbying Act* and *Lobbyists' Code of Conduct* ("*Lobbyists' Code*") for any situations involving the Trudeau Cabinet or Liberals, including decisions concerning the five complaints that Democracy Watch has filed with your office (all of which are about situations involving the Trudeau Cabinet or Liberal MPs) and any future similar complaints that Democracy Watch may file.

To allow the investigations into these situations to continue, Democracy Watch also requests that you delegate the investigations and rulings on the situations to a provincial ethics/integrity/lobbying commissioner who is not in any way under the control of, or connected to, you or the Trudeau Cabinet or any of the federal political parties.

This includes a request that you recuse yourself from making any decisions concerning Democracy Watch's complaints alleging that Barry Sherman of Apotex Inc. violated the *Lobbyists' Code* by hosting a fundraising event that then-Liberal Party Leader Justin Trudeau attended in August 2015, and by assisting with the organizing of a fundraising event that Finance Minister Bill Morneau attended in November 2016.

Under section 4.4 of the *Lobbying Act*, you can delegate to anyone outside the investigation of, and rulings on, Democracy Watch's complaints. I realize that subsection 4.4(b) states that you are prohibited from delegating the preparation and tabling in Parliament of the report on an investigation as set out in subsection 10.5(1). However, Democracy Watch requests that you accept whatever conclusions are reached by the independent person to whom you delegate the investigation and ruling on each complaint.

(a) Request that you recuse herself from ruling on situations involving the Trudeau Cabinet and Liberals because you were appointed by Prime Minister Trudeau through a process that violates the law

Democracy Watch requests that you recuse yourself from making any decisions about any investigations or rulings on situations involving the Trudeau Cabinet or Liberals because you were nominated by Prime Minister Trudeau to the position of Lobbying Commissioner, as set out at:

<https://pm.gc.ca/eng/news/2017/11/30/prime-minister-nominates-next-commissioner-lobbying>

after a process that was controlled by the Prime Minister's Office (PMO) and Cabinet and involved officials from the PMO and the office of Treasury Board Minister Scott Brison who is responsible for the *Lobbying Act*, as detailed in this Democracy Watch news release:

<http://democracywatch.ca/headhunting-firms-confirm-pmo-and-cabinet-staff-on-watchdog-selection-committees/>

and in this news article:

<https://ipolitics.ca/2017/12/06/lobbying-commissioner-nominee-applied-watchdog-post-not-one-got/>

The PMO- and Cabinet-controlled appointment process did not include consultation with opposition parties as required under subsection 4.1(1) of the *Lobbying Act*, which can be seen at:

<http://laws-lois.justice.gc.ca/eng/acts/L-12.4/page-2.html#h-5>

as the opposition parties made clear in several statements in the House of Commons, as well as in this article:

<https://ipolitics.ca/2017/12/06/lobbying-commissioner-nominee-applied-watchdog-post-not-one-got/>

and in this article:

<https://www.theglobeandmail.com/news/politics/liberal-government-nominates-languages-and-lobbying-commissioners/article37138810/>

Democracy Watch recently filed an application for judicial review of your appointment in Federal Court based on the reasonable apprehension of bias and conflict of interest on the part of the Trudeau Cabinet when appointing you, and the failure of the Cabinet to consult with opposition parties before making the appointment. The details concerning this application can be seen here: <http://democracywatch.ca/democracy-watch-files-lawsuits-challenging-trudeau-cabinets-appointments-of-new-ethics-commissioner-and-lobbying-commissioner/>

You share this reasonable apprehension of bias because you were chosen through a process controlled by Prime Minister Trudeau and his Cabinet, a process that failed to consult with opposition parties as required by subsection 4.1(1) of the *Lobbying Act*. Your appointment was approved in the House of Commons only on division, as several MPs voted against your appointment.

The Office of the Commissioner of Lobbying is investigating five situations complained about by Democracy Watch concerning alleged violations of the *Lobbyists' Code* in situations which involve Prime Minister Trudeau or other Cabinet ministers or Liberal MPs. The five situations are summarized in subsection A.1 at: <http://democracywatch.ca/democracy-watches-government-ethics-complaints-and-court-cases-from-2016-on/>

Your appointment is analogous to a situation in which the Prime Minister and Cabinet are sued by someone, and they choose the judge who hears and decides the case. It is true that the Cabinet appoints federal judges, but only from a list proposed by selection committees that have representatives from non-governmental organizations (unlike the selection committee that chose you, which only had members from the PMO and Cabinet).

As well, neither the Prime Minister nor the Cabinet choose which judges will hear and decide which cases, especially not cases challenging the decisions or actions of the Prime Minister or other Cabinet ministers, as it would be a clear conflict of interest for them to do so.

With your appointment, the Prime Minister and Cabinet have chosen the person who will hear and decide all cases of situations involving the relationship between lobbyists and the Prime Minister and Cabinet ministers and government official and MPs for the next seven years. This appointment puts you in a conflict of interest – there is a reasonable apprehension of bias on your part given that you were chosen by people involved in situations you will judge in terms of whether violations of the *Lobbying Act* and/or *Lobbyists' Code* occurred.

Given the above, Democracy Watch requests that recuse herself from investigating Democracy Watch's five complaints, and all situations involving the Trudeau Cabinet or Liberals, and that you refer the investigations to someone who is fully independent of the yourself, the Trudeau Cabinet, and all federal political parties.

(b) Request that you delegate all five Democracy Watch complaint matters and other matters involving Liberals to a person independent of yourself, the Trudeau Cabinet, and all federal political parties

There is no reason that your recusal should delay the handling and completion of the investigations and rulings on Democracy Watch's five complaints. All that has to happen is for you to contact provincial integrity/ethics/lobbying commissioners and request that one of them handle each matter. All of the information gathered by the Investigations Directorate of your office can be easily transferred to a provincial commissioner, and they can continue the investigation to completion with a ruling.

You would then take their draft report and finalize and table it in Parliament as under subsection 10.5(1).

A similar process has been used at the provincial level by ethics commissioners. For example, in 2016 Marguerite Trussler, Alberta's Ethics Commissioner, recused herself from investigating and ruling on a complaint because she was friends with two people involved in the matter. You can see details about this situation at:

<http://calgaryherald.com/news/politics/albertas-ethics-commissioner-cites-conflict-of-interest-removes-herself-from-review-of-tobacco-litigation-contract>

As Commissioner of Lobbying, you have an opportunity to ensure that situations being currently investigated by your office are investigated and ruled on in an impartial, legally correct manner, by recusing yourself. We hope it will do so.

Democracy Watch looks forward to hearing from the Office soon concerning whether you will recuse yourself from making these decisions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Duff Conacher', written in a cursive style.

Duff Conacher, Co-founder of Democracy Watch
on behalf of the Board of Directors of Democracy Watch